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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CATHIE KONYEN, an individual,

Plaintiff,

vs.

LOWES HOME CENTERS, LLC, a foreign
limited liability company,

Defendant.

CASE NO. 3:22-CV-00538

COMPLAINT

JURY DEMAND

I.

STATEMENT OF THE CASE

This is an employment-discrimination case arising under the Americans With Disabilities Act (“ADA”) as amended, and corresponding state laws, NRS 613.330 and NRS 613.340. This case also asserts a state-law claim for breach of an employment contract. Plaintiff Cathie Konyen worked as a Flooring Sales Specialist for Respondent Lowes Home Centers, LLC in Nevada, California, New York, and then back to Nevada, for over seventeen years, from February of 2002 to June of 2019, when she was fired.

During Ms. Konyen’s first tenure at the Lowes Reno, NV Store, during the period of March 2014 to January 2016, Ms. Konyen suffered an occupational disease in the form of a lower back injury, arising from the cumulative effects of her repeated lifting of flooring materials at Lowes. This amounted to a disability, protected under the ADA and corresponding state laws. Lowes knew that this occupational disease was permanent. Lowes encouraged Ms. Konyen not to file a worker’s compensation claim, and in return, Lowes promised that it “would take care of her,” *i.e.*, it would

1 accommodate her resulting disabilities—above and beyond that necessitated by the ADA and NRS
2 613.330. This promise was broken and forms the basis of Ms. Konyen’s breach-of-contract claim (or in
3 the alternative her unjust enrichment claim in quasi-contract).

4 Ms. Konyen’s disabilities presented “lifetime” physical limitations including: (1) a 10-lb. lifting
5 limitation; (2) not using ladders 10 feet tall or taller; (3) no pushing; (5) an allowance for her to sit
6 down at times, when not servicing customers; and (6) no bending. As well, Ms. Konyen was required
7 to attend physical therapy to treat her disabilities, requiring that she work a schedule having a shift that
8 ended at 5:00 p.m. during the week, but on the weekends she could work later. Notwithstanding her
9 disabilities, Ms. Konyen performed the essential functions of her job at Lowes quite well for years, with
10 the reasonable accommodations provided to her by Lowes. Ms. Konyen was a top-five sales performer
11 in any region and state where she worked. She satisfied her customers and took good care of them.
12 Thus, from the very beginning, Lowes was keenly aware of Ms. Konyen’s ADA-protected disabilities,
13 and it afforded her reasonable accommodations for around six years, until it suddenly withdrew those
14 accommodations in 2019.

15 More specifically, on or about May 19, 2019, Lowes Human Resource Manager/Store Manager
16 David Berntzen removed Ms. Konyen from her Flooring Sales Specialist position, at which point, she
17 was fired from that position. Mr. Berntzen then gave Ms. Konyen two unreasonable options: (1) she
18 could accept a demotion by taking another position at the store, either as a cashier or as an installed
19 sales coordinator position, both of which paid less than her prior Flooring Sales Specialist position did
20 (and the installed sales coordinator position was being phased out and was only a temporary position);
21 or (2) she could take short-term disability leave, at considerable loss of pay, which was also only
22 temporary, without any ability to return to employment with Lowes until she produced a 100%-healed
23 medical release, which Lowes *knew* she could not obtain, given the permanent nature of her disabilities.
24 These options were not reasonable accommodations under the ADA, especially in light of the fact that
25 Konyen could have continued to perform the essential functions of her Flooring Sales Specialist
26 position if Lowes provided the same or different reasonable accommodations to her.

27 Resisting this unlawful discrimination, Ms. Konyen complained about the matter to company
28 higher-ups, including by appealing the company’s decision through its company-administrative

process. After Ms. Konyen filed her appeal, Mr. Berntzen retaliated against Ms. Konyen, on or around May 25, 2019, by choosing the second option for her, short-term disability. She was placed on an involuntary leave of absence on that date. Ms. Konyen was told that she would need to obtain a full medical release before she could return to any type of work at Lowes. Lowes' demand for a 100%-healed, full medical release violated the ADA, which requires only that Ms. Konyen be able to perform the essential functions of her job with a reasonable accommodation.¹ Given no choice in the matter, Ms. Konyen applied for short-term disability. But she quickly learned that her application for short term disability would take 45-60 days to be processed before she could expect to receive any income. Ms. Konyen contacted Lowes HR and asked for payment of her outstanding Lowes' income, *i.e.*, her accrued 2-weeks' vacation and her 5 days of holiday pay. But Lowes told Ms. Konyen that she could not receive any outstanding vacation-holiday income while she was on disability leave, and that she needed to come off leave by putting in her two-weeks' "notice" to the company. She was told that after she provided her "notice," she could go back on short-term disability. Therefore, on or about June 6, 2019, Ms. Konyen emailed her "notice," solely for purposes of obtaining her accrued vacation and sick leave pay, but not to effect a permanent or voluntary separation of employment from Lowes. In this regard, she had historically filed "30 day notices" with Lowes before, also for administrative purposes only, in connection with her transfers from one Lowes store to another Lowes store, which, as here, was also not intended to effect her voluntary or permanent separation of employment from Lowes, altogether.

In any event, by that time on June 6, 2019, Ms. Konyen had *already* been terminated from her Sales Flooring Specialist position, and she was constructively discharged from all other employment with Lowes because she was prohibited from returning to employment with Lowes, unless she could obtain a full medical release, which she could not do, due to the permanency of her disability. Thus, on

¹ An employer's requirement of a full-medical release or "100%-healed" medical release violates the ADA. See *McGregor v. AMTRAK*, 187 F.3d 1113, 1116 (9th Cir. 1999) (citing *Hendricks-Robinson v. Excel Corp.*, 154 F.3d 685, 699 (7th Cir. 1998); *Weigel v. Target Stores*, 122 F.3d 461, 466 (7th Cir. 1997); *Norris v. Allied-Sysco Food Servs., Inc.*, 948 F. Supp. 1418, 1437 (N.D. Cal. 1996); *Heise v. Genuine Parts Co.*, 900 F. Supp. 1137, 1154 & n.10 (D. Minn. 1995); *Hutchinson v. United Parcel Serv., Inc.*, 883 F. Supp. 379, 397 (N.D. Iowa 1995); and *Sarsycki v. United Parcel Service*, 862 F. Supp. 336, 341 (W.D. Okla. 1994)).

1 or about June 26, 2019, Lowes completely terminated Ms. Konyen’s employment, without ruling on
2 her appeal. Lowes discriminated and retaliated against Ms. Konyen by unreasonably rescinding her
3 established reasonable accommodation, firing her from her Flooring Sales Specialist position,
4 demanding that she obtain a “full-medical release” as a condition precedent to further employment with
5 Lowes, and by wrongfully terminating her due to her disability, in violation of the ADA, as amended,
6 and NRS 613.330. Inasmuch as Lowes broke its promise to continue to accommodate her disability—
7 above and beyond the requirements of the ADA and NRS 613.330, in exchange for her forbearance in
8 filing a worker’s compensation claim against Lowes, Lowes breached its contract, or in the alternative,
9 its quasi-contract with Ms. Konyen. Ms. Konyen seeks monetary, equitable, and injunctive relief.

10 II.

11 JURISDICTION AND VENUE

12 1. The federal claims of this case are maintained pursuant to 28 U.S.C. § 1331 (“[t]he
13 district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or
14 treaties of the United States”). In particular, this case asserts federal discrimination claims, actionable
15 under the Americans with Disabilities Act and the Americans with Disabilities Act Amendment Act
16 (collectively, “ADA”), codified at 42 U.S.C. § 12101 *et seq.* This Court has supplemental jurisdiction
17 over the corresponding state-law discrimination claims (NRS 613.330 and NRS 613.340) and contract
18 claim, pursuant to 28 U.S.C. § 1367(a) (“the district courts shall have supplemental jurisdiction over all
19 other claims that are so related to claims in the action within such original jurisdiction that they form
20 part of the same case or controversy under Article III of the United States Constitution”).

21 2. Venue is proper in the U.S. District Court situated in Reno, Nevada, under Local Rule
22 IA 1-6 and 28 U.S.C. § 1391(b) because this Court is located in the “unofficial Northern Division,”
23 embracing the City of Reno, County of Washoe, Nevada, and because Defendant LOWES HOME
24 CENTERS, LLC, conducted business in the city of Reno, county of Washoe, Nevada where all or a
25 substantial part of the events or omissions giving rise to the claims of the case occurred.

26 III.

27 PARTIES

28 3. At all times relevant herein, Plaintiff CATHIE KONYEN (“Plaintiff” and “KONYEN”)

1 was a citizen of the state of Nevada, residing in the County of Washoe, Nevada, and she was employed
2 by Defendant LOWES HOME CENTERS, LLC, a home improvement company, as a Flooring Sales
3 Specialist, working most recently at the LOWES HOME CENTERS, LLC's business location, situated
4 at or about 5075 Kietzke Lane, in the city of Reno, Nevada in the county of Washoe, further identified
5 as Store No. 0321.

6 4. Defendant LOWES HOME CENTERS, LLC ("Defendant" and "LOWES") is a foreign
7 limited liability company organized under the laws of North Carolina, authorized to do business in the
8 state of Nevada and actually doing business in the state of Nevada, operating home improvement stores
9 in many locations in Nevada, including at LOWES Store No. 0321, located at or about 5075 Kietzke
10 Lane, in the city of Reno, Nevada in the county of Washoe. At all times relevant herein, LOWES
11 employed more than 500 employees.

12 IV.

13 GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

14 *KONYEN's Employment History with LOWES*

15 5. At all times relevant hereto KONYEN was employed by LOWES, working at various
16 locations and/or times, set forth as follows:

17 (A) From about March of 2014 to about January of 2016, KONYEN was employed
18 by LOWES, working at the LOWES Reno, Nevada Store;

19 (B) From about January of 2016 to about April of 2018, KONYEN was employed by
20 LOWES, working at a LOWES store in San Jose, California, as a flooring sales specialist;

21 (C) From about April of 2018 to about March of 2019, KONYEN was employed by
22 LOWES, working at a LOWES store in Newburgh, New York, as an appliance specialist; and

23 (D) From about April of 2019 to about May of 2019, KONYEN was employed by
24 LOWES, working at the LOWES Reno, Nevada Store, as a flooring sales specialist.

25 6. During her employment tenure with LOWES, KONYEN had good performance reviews
26 and was considered by LOWES to be a good employee.

27 7. During her employment tenure with LOWES, KONYEN was a top-five sales performer
28 in any region and state where she worked, and she satisfied her customers and took good care of them.

KONYEN's Disabilities

8. During KONYEN's first tenure at the LOWES Reno, NV Store, during the period of March 2014 to January 2016, Ms. Konyen suffered an occupational disease in the form of a lower back injury, arising from the cumulative effects of her repeated lifting of flooring materials at LOWES.

9. The LOWES store management and HR personnel learned that KONYEN's occupational disease was permanent.

10. The LOWES store management encouraged KONYEN not to file a worker's compensation claim for her occupational disease, and in return, LOWES promised that it "would take care of her," *i.e.*, it would voluntarily accommodate her resulting disabilities, above and beyond the ordinary requirements imposed on LOWES by federal and state law.

11. As a result of her occupational disease, KONYEN suffered physical impairments ("Physical Impairments"), which restricted her physical abilities and imposed physical limitations on her, including as confirmed by her medical providers, such as: (1) a 10-lb. lifting limitation; (2) not using ladders 10 feet tall or taller; (3) no pushing items; (5) an allowance to sit down occasionally at work, when not serving customers; and (6) no bending.

12. At all times relevant herein, KONYEN'S Physical Impairments substantially limited one or more of her major life activities, including: (1) lifting more than 10-lbs.; (2) using ladders 10 feet tall or taller; (3) pushing objects; (5) enduring prolonged periods of standing, without sitting breaks; (6) bending her body; and (7) working.

13. As well, KONYEN's Physical Impairments required and require that she receive medical care, in the form of regular, ongoing, physical therapy, to treat her disabilities, which historically required that she work a schedule having a shift that ended at 5:00 p.m. during the week, but on the weekends she could work later.

14. These Physical Impairments and substantial limitations are expected to continue for the rest of KONYEN'S life.

15. At all times relevant herein, KONYEN received medical treatment for her Physical impairments.

16. At all times relevant herein, KONYEN'S Physical Impairments were disabilities

(“Disabilities”), within the meaning, scope, and protection of the American’s With Disabilities Act and its Amendment Act (collectively, the “ADA”) and corresponding state statutes, NRS 613.330 and NRS 613.340.

LOWES’ Years’-Long Accommodation of Konyen’s Disabilities

17. Notwithstanding the existence of KONYEN’S Disabilities, at all times relevant herein, KONYEN could perform, did perform, and could have continued to perform, the essential functions of her job with reasonable accommodations from LOWES, including those accommodations described herein and others not proposed or considered by LOWES, including accommodations that:

(A) continued the very same accommodations LOWES historically provided to KONYEN at all the LOWES stores, where she worked during her lengthy employment tenure with LOWES, including:

- (1) LOWES accommodating KONYEN’s 10-lb. lifting limitation;
- (2) LOWES not requiring that KONYEN use ladders 10 feet tall or taller;
- (3) LOWES not requiring that KONYEN push items;
- (4) LOWES allowing KONYEN to sit down occasionally at work, when not serving customers;
- (5) LOWES not requiring that KONYEN perform work that would cause her to bend her body; and
- (6) LOWES allowing KONYEN to work a schedule during the weekdays that ended by 5:00 p.m., to allow her to go to her doctors’ appointments (but she was available to work after 5:00 p.m. on weekends);

(B) made modifications or adjustments to the work environment at LOWES, or to the manner or circumstances under which KONYEN’S job duties or position were customarily performed, including by job restructuring, modifying KONYEN’S work schedule, acquiring or modifying equipment, changing company policies, and providing assistants or helpers;

(C) transferred KONYEN to another available, suitable position within the company, regardless of location, for which she was qualified, *i.e.*, a job transfer that did not constitute an Adverse Employer Action against KONYEN, including those proposed, adverse-action transfers

1 described in ¶ 29 herein; and

2 (D) allowed KONYEN to take medical leave with the reasonable opportunity to
3 return at a later time, with further reasonable accommodations, *i.e.*, not insisting that she obtain a
4 100%-healed” or “full” medical release.

5 18. At all times relevant herein, during her employment tenure at LOWES, KONYEN
6 (and/or those acting on her behalf, including her medical providers) communicated to Defendant
7 LOWES (including to its third-party HR administrators, including Sedgwick) that KONYEN suffered
8 from Physical impairments and Disabilities, and requested that Defendant LOWES provide her
9 reasonable accommodations for her Disabilities,

10 19. At all times relevant herein, Defendant LOWES was aware of KONYEN’s Physical
11 impairments and Disabilities, including when receiving medical records and information from, or on
12 behalf of, KONYEN.

13 20. From about 2014 to about May 19, 2019, LOWES historically accommodated
14 KONYEN’s Disabilities, including as described in ¶ 17(A), hereinabove.

15 21. Defendant LOWES’ awareness of KONYEN’s Disabilities and its historical
16 accommodation of her Disabilities is further established in the following occurrences:

17 (A) The 2014-2016 occurrences in the Reno, Nevada Store (Store No. 0321),
18 referenced in ¶¶ 8-12, hereinabove;

19 (B) In the Summer of 2017, LOWES Store Manager Nick Peri asked KONYEN to
20 move to the Flooring Sales Specialist position at the LOWES San Jose, CA Store (Store No. 1756).
21 Mr. Peri did this after receiving the authorization to do so from his boss, Jeff Reynolds, a Lowes
22 District Manager. Thus, LOWES management—including Mr. Peri and Mr. Reynolds—knew about
23 KONYEN’s Disabilities and LOWES’ historical accommodations for her Disabilities, which
24 reasonable accommodations LOWES had provided to KONYEN since as early as 2014. When
25 KONYEN worked at the LOWES San Jose, CA Store, Lowes continued to provide these reasonable
26 accommodations to KONYEN for her disabilities;

27 (C) Subsequently, in the Spring of 2018, KONYEN transferred to the position of
28 appliance specialist in the LOWES Newburgh, NY Store (Store No. 1584). The appliance specialist

1 position had higher lifting requirements than the Flooring Sales Specialist position did. KONYEN's
2 transfer to the LOWES Newburgh, NY Store, as well as her accommodations, were also approved by
3 LOWES' management, including Andrew Cook, Christian Trocki, Megan Smith, Steve Kovacik, with
4 knowledge of her Disabilities and LOWES' historical accommodations of those Disabilities. When
5 KONYEN worked at the LOWES Newburgh, NY Store, LOWES continued to provide the same
6 reasonable accommodations to KONYEN for her disabilities, as provided before in Reno, NV and San
7 Jose, CA; and

8 (D) Subsequently, LOWES considered transferring KONYEN back to the LOWES
9 store in Reno, NV (Store No. 0321), to a Flooring Sales Specialist position there. Initially, there was
10 no such position open at the LOWES Reno, NV Store. However, David Berntzen, the HR
11 manager/Store Manager at LOWES Reno, NV, told KONYEN that, if she would transfer to the
12 LOWES Reno, NV Store, he would get such a position opened for her because he needed KONYEN's
13 selling skills and help with the young associates he supervised at the store. Subsequently, Berntzen
14 phoned KONYEN and informed her that he had approval from a new District Manager Jeff Reynolds to
15 open a Flooring Sales Specialist position for her at the Reno, NV Store, to which she could transfer.
16 Reynolds told Berntzen that Berntzen would be lucky to have KONYEN because of her excellent sales
17 history with Reynolds. Once KONYEN's schedule and paperwork was transferred, Berntzen told
18 KONYEN that she had "banker's hours," to which KONYEN reminded him that she attended physical
19 therapy and pain management classes after work. In response, Berntzen recalled her back-related
20 Disabilities, and stated his recognition of such by saying, "Oh yeah, your back." Thus, Ms. Konyen's
21 transfer to the LOWES Reno, NV Store was made with the full knowledge of her disabilities and
22 LOWES' historical accommodation of her disabilities and LOWES' intention to continue to
23 accommodate her Disabilities as LOWES continuously did.

24 22. For a time during her second tenure at the LOWES Reno, NV Store, LOWES
25 accommodated KONYEN's disabilities.

26 23. Indeed, LOWES' third-party administrator, Sedgwick, had *already approved* and
27 updated KONYEN's disability-accommodation paperwork for her 2019 work at the LOWES Reno, NV
28 Store, which was valid *for another two years*, through 2021, with the same medical work restrictions as

1 it approved in the past.

2 24. Between the timeframe of 2014 to the day LOWES fired KONYEN, KONYEN's
3 Disability-based medical-work restrictions did not change over the years, and LOWES'
4 accommodations also remained the same, and they worked for many years and were already *pre-*
5 *approved* through 2021.

6 25. At all times relevant herein, with each request for an accommodation by KONYEN,
7 Defendant LOWES (including through its third-party administrator including Sedgwick) was under a
8 legal duty to engage in the ADA/NRS 613.330-mandated "interactive-process" with KONYEN, in
9 good faith, to identify and implement appropriate reasonable accommodations for KONYEN's
10 Disabilities.

11 26. At all times relevant herein, before removing its years'-long accommodations provided
12 to KONYEN, Defendant LOWES (including through its third-party administrator including Sedgwick)
13 was under a legal duty to engage in the ADA/NRS 613.330-mandated "interactive process" with
14 KONYEN, in good faith, to identify and implement appropriate reasonable accommodations for
15 KONYEN'S Disabilities.

16 27. However, during the process of removing its years'-long accommodations provided to
17 KONYEN, Defendant LOWES (including through its third-party administrator including Sedgwick)
18 breached this legal duty, by not engaging in the "interactive process," or failing to do so in good faith,
19 with KONYEN, to identify and implement appropriate reasonable accommodations for KONYEN'S
20 Disabilities.

21 ***LOWES' Removal of Accommodations of KONYEN's Disabilities***

22 28. Instead, on or about May 19, 2019, Berntzen removed KONYEN from her Sales
23 Specialist position at the LOWES Reno Store, at which point, she was fired from that position, and
24 KONYEN's removal from this position amounted to an adverse employer action ("Adverse Employer
25 Action") taken by LOWES against KONYEN.

26 29. LOWES, through Berntzen, then gave KONYEN two unreasonable options:

27 (A) LOWES told KONYEN that she could accept a demotion by taking another
28 position at the store, either as a cashier or as an installed sales coordinator position, both of which paid

1 less than her prior Flooring Sales Specialist position did (and the installed sales coordinator position
2 was being phased out and was only a temporary position); or

3 (B) LOWES told KONYEN that she could take short-term disability leave, at a
4 considerable loss of pay to her, which was also only temporary, without any ability to return to
5 employment with Lowes until she produced a 100%-healed medical release, which Lowes *knew* she
6 could not obtain, given the permanent nature of her Disabilities.

7 30. These choices, foisted on KONYEN, were not reasonable accommodations under the
8 ADA or NRS 613.330, but were instead Adverse Employer Actions taken against her.

9 31. At all times relevant herein, LOWES could have continued to provide the same
10 accommodations it historically provided to KONYEN, without experiencing “undue hardship”—or
11 significant difficulty or expense, as informed by and in consideration of the following factors:

12 (A) The nature and net cost of the Accommodation, taking into consideration the
13 availability of tax credits and deductions, and/or outside funding;

14 (B) LOWES’ overall financial resources;

15 (C) The number of persons LOWES employs and the effect of the Accommodation
16 on LOWES’ expenses and resources; and

17 (D) The impact of the Accommodation upon LOWES’ business operations, including
18 the impact on the ability of other employees to perform their duties.

19 32. Prior to withdrawing its accommodations from KONYEN, and all times relevant
20 thereafter, LOWES failed to evaluate or properly consider in good faith whether providing KONYEN
21 with the same accommodations it historically provided to KONYEN, would have caused LOWES to
22 experience “undue hardship”—or significant difficulty or expense, as informed by and in consideration
23 of the factors identified in ¶ 31(A)-(D), hereinabove.

24 33. At all times relevant herein, LOWES could have even provided accommodations to
25 KONYEN, other than the ones historically provided to her, and other than those Adverse Employer
26 Action options offered to KONYEN described in ¶ 29 hereinabove, without experiencing “undue
27 hardship”—or significant difficulty or expense, as informed by and in consideration of the factors
28 identified in ¶ 31(A)-(D), hereinabove.

1 34. Refusing to accept the Adverse Employer Actions of her firing from the position of
2 Sales Specialist position at the LOWES Reno Store or the proposed Adverse Employer Actions,
3 described in ¶¶ 28-29 hereinabove, KONYEN resisted LOWES' discriminatory practices and appealed
4 the company's decision through its company-administrative process ("Company Administrative
5 Appeal").

6 35. KONYEN's actions and resistance here were "protected activities" ("Protected
7 Activities") within the meaning of the anti-retaliation provisions of the ADA and NRS 613.330,
8 including the following actions and resistance:

9 (A) KONYEN's continued or renewed requests for accommodations;

10 (B) KONYEN's requests that her years'-long accommodations not be removed—or
11 that they be reinstated; and

12 (C) KONYEN's resistance to her firing from the Sales Specialist position, and her
13 resistance to LOWES' efforts to demote her or force her out on disability-leave, with no hope of
14 returning to LOWES given the permanent nature of her Disabilities, including that resistance evidenced
15 by her filing a Company Administrative Appeal of LOWES' decisions and Adverse Employer Actions
16 taken against her;

17 36. After KONYEN filed her Company Administrative Appeal, Berntzen took further
18 Adverse Employer Actions against KONYEN, which were discriminatory and retaliatory, on or around
19 May 25, 2019, including when:

20 (A) Berntzen forced KONYEN out on short-term disability leave; and

21 (B) Berntzen foreclosed KONYEN's ability to return to work with LOWES, when
22 telling KONYEN that she would need to obtain a "100%-healed" release or "full medical" release
23 before she could return to any type of work at Lowes.

24 37. LOWES' demand that KONYEN obtain a "100%-healed" release or "full medical"
25 release before LOWES would consider allowing her to return to work in any position violated the ADA
26 and NRS 613.330, which require only that KONYEN be able to perform the essential functions of her
27
28

1 job with a reasonable accommodation.²

2 38. LOWES' actions taken here, coupled with a demand that KONYEN obtain a "100%-
3 healed" release or "full medical" release before she would be permitted to return to work at LOWES in
4 any position, amounted to a complete termination of KONYEN's employment with LOWES—whether
5 as a direct termination, imminent termination, or a constructive discharge, for which KONYEN had no
6 choice in the matter.

7 39. Subsequently, given no choice in the matter, KONYEN applied for short-term disability,
8 but she quickly learned that her application for short term disability would take 45-60 days to be
9 processed before she could expect to receive any income.

10 40. KONYEN contacted LOWES HR and asked for payment of her outstanding LOWES'
11 income, *i.e.*, her accrued 2-weeks' vacation and her 5 days of holiday pay.

12 41. But LOWES told KONYEN that she could not receive any outstanding vacation-holiday
13 income while she was on disability leave, and that she needed to come off leave by putting in her two-
14 weeks' "notice" to the company.

15 42. LOWES did not warn KONYEN that if she put in such "notice" to the company, such an
16 action would be construed by LOWES as KONYEN resigning her employment with LOWES.

17 43. Moreover, LOWES and KONYEN had a course of dealings, whereby, KONYEN
18 historically put in her "notice" to LOWES on several prior occasions, which was not taken by LOWES
19 to mean that KONYEN was resigning her employment with LOWES.

20 44. For example, KONYEN had historically filed "30 day notices" with LOWES before, in
21 connection with her transfers from one LOWES store to another LOWES store, which, as here, was
22 also not intended to effect her voluntary or permanent separation of employment from LOWES.

23 45. Thus, with the understanding that she was not resigning her employment with LOWES,
24 on or about June 6, 2019, KONYEN emailed her "notice" to LOWES, as instructed by LOWES to do,
25 solely for purposes of obtaining her accrued vacation and sick leave pay, but not to effect a permanent
26 or voluntary separation of employment from LOWES.

27
28 ² See n.1, *supra*.

1 46. At no time relevant herein did KONYEN voluntarily resign from her employment with
2 LOWES, nor did she withdraw her Company Administrative Appeal.

3 47. At no time relevant herein did LOWES believe, or reasonably believe, that KONYEN
4 voluntarily resigned from her employment with LOWES, nor did LOWES believe, or reasonably
5 believe, that KONYEN withdrew her Company Administrative Appeal.

6 48. In any event, by the date of June 6, 2019, LOWES had already terminated KONYEN
7 from her Sales Flooring Specialist position, and LOWES had already effectively discharged KONYEN
8 from all employment with LOWES, when it prohibited her from returning to employment with
9 LOWES, unless she could obtain a “100%-healed” release or “full medical” release, which she could
10 not do, due to the permanency of her disability.

11 ***LOWES’ Formal Termination of KONYEN***

12 49. Subsequently, on or about June 26, 2019, Lowes formally terminated KONYEN’s
13 employment with LOWES, without ruling on her Company Administrative Appeal.

14 50. LOWES discriminated and retaliated against KONYEN by rescinding her established
15 reasonable accommodation, firing her from her Flooring Sales Specialist position, demanding that she
16 obtain a “100%-healed” release or “full-medical release” as a condition precedent to her further
17 employment with Lowes, and by wrongfully terminating her due to her Disabilities, in violation of the
18 ADA, as amended, and NRS 613.330.

19 51. Inasmuch as LOWES broke its promise to continue to accommodate KONYEN’s
20 Disabilities, in exchange for her forbearance in filing a worker’s compensation claim against LOWES,
21 as described herein, LOWES breached its legally-enforceable promise to KONYEN—whether that
22 promise is construed as a contract or other legally-enforceable promise, enforceable in law or equity.

23 52. LOWES took the Adverse Employer Actions described herein against KONYEN,
24 including her firing, *because* of her Disabilities and in retaliation for her Protected Activities,
25 notwithstanding any pretext offered to mask its unlawful disability discrimination and retaliation.

26 53. In taking these Adverse Employer Actions against KONYEN, LOWES unlawfully
27 discriminated against KONYEN based on her Disabilities and retaliated against her for engaging in the
28 Protected Activities described herein, in violation of the ADA and NRS 613.330 and NRS 613.340.

1 54. At all times relevant herein, Defendant LOWES deliberately and intentionally engaged
2 in its Adverse Employer Actions against KONYEN, intending to engage in disability discrimination
3 and unlawful retaliation against her.

4 ***KONYEN's Exhaustion of Administrative Remedies***

5 55. KONYEN timely submitted, or caused to be submitted, a charge of unlawful disability
6 discrimination and retaliation, for both state (NRS 613.330 and NRS 613.340) and federal violations
7 (ADA) with the Equal Employment Opportunity Commission ("EEOC") in EEOC Claim No. 550-
8 2020-00033, as alleged herein.

9 56. At all times relevant herein, the Nevada Equal Rights Commission ("NERC"), a
10 commission within the Nevada Department of Employment, Training, and Rehabilitation, was the Fair
11 Employment Practices Agency ("FEPA") which was responsible for enforcing anti-employment
12 discrimination laws in Nevada, similar to the federal anti-employment discrimination laws enforced by
13 EEOC.

14 57. At all relevant times herein, the NERC/FEPA and the EEOC had a "work-share
15 agreement," ("WSA") which permitted either the NERC/FEPA or the EEOC to process *both* the state
16 (NRS 613.330 and NRS 613.340) and federal (ADA) claims, depending on where the claim was filed.

17 58. Pursuant to the WSA, the EEOC received and processed both the state (NRS 613.330
18 and NRS 613.340) and federal (ADA) claims, when handling EEOC Claim No. EEOC Claim No. 550-
19 2020-00033, and all claims asserted herein, whether state-law claims or federal claims, are now
20 administratively exhausted.

21 59. On September 8, 2022, the EEOC, issued a "right-to-sue letter" for the discrimination
22 claims of this case, as described in EEOC Claim No. 550-2020-00033, pursuant to 42 U.S.C. 12111 *et*
23 *seq.*, for *both* the state (NRS 613.330 and NRS 613.340) and federal (ADA) claims, and KONYEN
24 timely filed the instant suit within ninety (90) days of the receipt of that "right-to-sue letter."

25 60. Under Federal Rule of Civil Procedure 8, the claims of this pleading are pleaded
26 consistently, inconsistently, and/or alternately, as permitted under the rule, including for claims whose
27 legal elements require "but-for" or "determining-factor" causation.

28 ///

FEDERAL CLAIMS

V.

FIRST CLAIM FOR RELIEF

UNLAWFUL DISCRIMINATION BASED ON DISABILITY:

Failure to Engage in the Interactive Process in Good Faith, Failure to Accommodate Disabilities, Disparate Treatment, and Termination of Employment Because of Disabilities

(Americans With Disabilities Act and Amendment Act - 42 U.S.C. § 12101 *et seq.*)

61. KONYEN incorporates by reference all prior allegations of this *Complaint*, as though fully set forth herein.

62. Defendant LOWES violated the ADA and 42 U.S.C. § 12101 *et seq.* and is liable for its culpable conduct and the conduct of its employees and agents, including its HR Personnel, under the ADA and 42 U.S.C. § 12101 *et seq.* for the reasons set forth in this claim for relief.

63. At all times relevant herein, KONYEN's Disabilities, described herein, were Physical Impairments, as described herein, which Disabilities are covered by, and within the meaning of, the ADA codified at 42 U.S.C. § 12102 *et seq.*, in that these Physical Impairments substantially limited one or more of KONYEN'S major life activities, including those described in ¶ 12, hereinabove.

64. At all times relevant herein, Defendant LOWES, including through its agents and employees:

- (A) were aware of KONYEN's Disabilities;
- (B) were aware that KONYEN had a record of such Disabilities; and
- (C) regarded KONYEN as having Physical Impairments, including her Disabilities, (which have continued for than six months) that substantially limited one or more of her major life activities, as described herein, including when receiving medical records, requests for accommodation, and information from, or on behalf of, KONYEN.

65. Notwithstanding KONYEN's Disabilities, at all relevant times herein, KONYEN could perform the essential functions of her job, with a reasonable accommodation of her Disabilities, including those accommodations described in ¶ 17 hereinabove—whether such accommodations were historically provided by LOWES or not, and whether such accommodations were actually considered

1 by Defendant LOWES or not.

2 66. At all relevant times herein, Defendant LOWES was required to engage in the
3 “interactive process” mandated by the ADA, to identify and implement appropriate reasonable
4 accommodations to KONYEN for her Disabilities, including to explore and identify the precise
5 limitations resulting from KONYEN’S Disabilities and the potential reasonable accommodations that
6 could overcome those limitations.

7 67. At all relevant times herein, Defendant LOWES, including through its employees and
8 agents, refused to, and intentionally failed to, engage or *to continue* to engage, in the mandatory ADA-
9 interactive-process in good faith with KONYEN regarding her requests for accommodation of her
10 Disabilities and the continued provision of accommodations historically provided to KONYEN, as
11 described herein.

12 68. If Defendant LOWES had properly engaged or continued to engage in the Interactive
13 Process with KONYEN, as described herein, then Defendant LOWES and KONYEN could have
14 identified reasonable accommodations for KONYEN’S Disabilities, which would have allowed her to
15 remain employed with Defendant LOWES, as envisioned by the ADA, including the accommodations
16 historically provided to KONYEN and other accommodations described in ¶ 17 hereinabove.

17 69. At all relevant times herein, Defendant LOWES, including through its employees and
18 agents, intentionally engaged in its Adverse Employer Actions taken against KONYEN, described
19 herein, including at ¶¶ 28-30, 36, and 48-54, because of her Disabilities.

20 70. At all relevant times herein, Defendant LOWES, including through its employees and
21 agents, intentionally engaged in disparate treatment of KONYEN, as compared to other similarly
22 situated employees, and such differences in treatment were based on KONYEN’S protected
23 characteristic of her Disabilities, as described herein, including when taking the Adverse Employer
24 Actions against KONYEN, described herein.

25 71. As a result of such intentional, unlawful, and discriminatory conduct against KONYEN
26 by Defendant LOWES, including through its employees and agents, based on and because of
27 KONYEN’S Disabilities, KONYEN has suffered, and continues to suffer, economic losses, including
28 lost wages and benefits, back pay, front pay, physical and emotional harm, including mental anguish,

1 inconvenience, and the loss of enjoyment of life, for which she is entitled to compensatory and
2 equitable damages, in an amount to be proven at trial.

3 72. The Adverse Employer Actions, disparate treatment, and unlawful discrimination by
4 Defendant LOWES, including its employees and agents, was intentional, willful, malicious, and/or
5 engaged in with a reckless indifference to the health, safety, wellbeing, federally-protected and state-
6 law-protected rights of KONYEN, including when Defendant took its Adverse Employer Actions
7 against KONYEN—all while Defendant LOWES, its management, and its HR personnel made legally -
8 binding promises to KONYEN when asking her to forebear in bringing her worker's compensation
9 claim in exchange for LOWES perpetually accommodating her Disabilities, above and beyond the
10 ordinary requirements imposed by law on LOWES (as described in ¶ 10 hereinabove)—and Defendant
11 LOWES, its management, and its HR Personnel were well aware of KONYEN'S rights under the
12 ADA, NRS 613.330, and NRS 613.340, and all while they were well aware of Defendant LOWES'
13 legal obligations under the ADA, NRS 613.330, and NRS 613.340—warranting an award of punitive
14 damages, to punish Defendant LOWES, in an amount determined by a jury at trial, according to law.

15 73. As a result of such intentional, unlawful, and discriminatory conduct against KONYEN
16 by Defendant LOWES, including through its employees and agents, based on and because of
17 KONYEN'S Disabilities, KONYEN has had to retain the services of attorneys in this matter, and she,
18 therefore, is entitled to, and seeks reimbursement for, her attorneys' fees and costs, her expert-witness
19 fees, and her court costs, in an amount to be proven at trial.

20 74. As a result of such intentional, unlawful, and discriminatory conduct against KONYEN
21 by Defendant LOWES, including through its employees and agents, based on and because of
22 KONYEN'S Disabilities, KONYEN is entitled to, and seeks, declaratory relief, in the form of a
23 declaration by this Court, that Defendant violated KONYEN'S rights by engaging in unlawful
24 discrimination, as alleged herein.

25 75. As a result of such intentional, unlawful, and discriminatory conduct against KONYEN
26 by Defendant LOWES, including through its employees and agents, based on and because of
27 KONYEN'S Disabilities, KONYEN is entitled to, and seeks, injunctive relief, in the form of an
28 injunction issued by this Court, that compels Defendant LOWES to give effect to the rights of

KONYEN, and to take other appropriate action, including: the removal of all adverse information from her employee file, relevant to the claims of this case, and, if appropriate and feasible, the reinstatement of KONYEN to her prior employment position or another vacant position with Defendant LOWES, for which she qualifies, with full pay and benefits, as if never terminated.

VI.

SECOND CLAIM FOR RELIEF

UNLAWFUL RETALIATION BASED ON DISABILITY:

Violation of the Anti-Retaliation Provisions of the ADA, 42 U.S.C. § 12203 *et seq.*

76. KONYEN incorporates by reference all prior allegations of this *Complaint*, as though fully set forth herein.

77. Defendant LOWES violated the ADA's anti-retaliation provision and 42 U.S.C. § 12203 *et seq.* and is liable for unlawful retaliation under the ADA for its culpable conduct and the conduct of its employees and agents, under the ADA and 42 U.S.C. § 12203 *et seq.* for the reasons set forth in this claim for relief.

78. At all times relevant herein, KONYEN engaged in the Protected Activities described herein, including in ¶¶ 35-36 and 48-51, hereinabove, which were protected under the anti-retaliation provisions of the ADA.

79. At all times relevant herein, Defendant LOWES, including through its employees and agents, subjected KONYEN to the Adverse Employer Actions described herein, including as described in ¶¶ 28-30, 32-34, 36, 48-54 hereinabove, in response to, retaliation for, and because of, her having engaged in the Protected Activities, described herein.

80. At all times relevant herein, such Adverse Employer Actions taken against KONYEN by Defendant LOWES, including through its employees and agents, as described herein, would be materially adverse to a reasonable employee, reasonably likely to deter charging parties or others from engaging in protected activity, and such Adverse Employer Actions materially affected the compensation, terms, conditions, or privileges of KONYEN'S employment and other rights secured to KONYEN, including LOWES' promise to "take care of" KONYEN in exchange for her forbearing in filing a worker's compensation claim, which included accommodating her Disabilities, above and

1 beyond the requirements of the ADA.

2 81. There was a causal link between KONYEN'S Protected Activities and these Adverse
3 Employer Actions that KONYEN suffered, including that causation shown by direct or circumstantial
4 evidence, including temporal proximity, and this included LOWES directly attributing its Adverse
5 Employer Actions against KONYEN to her Disabilities, which also related fundamentally to
6 KONYEN's Protected Activities.

7 82. Defendant LOWES, including through its employees and agents, subjected KONYEN to
8 these Adverse Employer Actions, in retaliation for, and because of, her Protected Activities.

9 83. Defendant LOWES, including through its employees and agents, unlawfully
10 discriminated against KONYEN by retaliation, described herein, and violated the anti-retaliation
11 provisions of the ADA, including as codified at 42 U.S.C. § 12203.

12 84. As a result of such intentional, unlawful, retaliatory conduct against KONYEN by
13 Defendant LOWES, including through its employees and agents, based on and because of KONYEN'S
14 Protected Activities, KONYEN has suffered, and continues to suffer, economic losses, including lost
15 wages and benefits, back pay, front pay, physical and emotional harm, including mental anguish,
16 inconvenience, and the loss of enjoyment of life, for which she is entitled to compensatory and
17 equitable damages, in an amount to be proven at trial.

18 85. The deliberate, unlawful, retaliatory conduct against KONYEN by Defendant LOWES,
19 including through its employees and agents, based on and because of KONYEN'S Protected Activities,
20 was intentional, willful, malicious, and/or engaged in with a reckless indifference to the health, safety,
21 wellbeing, federally-protected rights, and state-law-protected rights of KONYEN—including as shown
22 by the fact that Defendant LOWES' management and HR personnel were trained on their legal
23 obligations under anti-employment-discrimination laws and of the corresponding rights of their
24 employees, including KONYEN, and they were well aware of KONYEN'S rights under the ADA, NRS
25 613.330, and NRS 613.340—as well as the promise LOWES made to KONYEN to “take care of her,”
26 in exchange for her forbearing in filing a worker's compensation claim, *i.e.*, to accommodate her
27 Disabilities to a degree above and beyond that required by the ADA and NRS 613.330—warranting an
28 award of punitive damages, to punish Defendant LOWES, in an amount determined by a jury at trial,

1 according to law.

2 86. As a result of such intentional, unlawful, and retaliatory conduct against KONYEN by
3 Defendant LOWES, including through its employees and agents, based on and because of KONYEN'S
4 Protected Activity, KONYEN has had to retain the services of attorneys in this matter, and she,
5 therefore, is entitled to, and seeks reimbursement for, her attorneys' fees and costs, her expert-witness
6 fees, and her court costs, in an amount to be proven at trial.

7 87. As a result of such intentional, unlawful, and retaliatory conduct against KONYEN by
8 Defendant LOWES, including through its employees and agents, based on and because of KONYEN'S
9 Protected Activity, KONYEN is entitled to, and seeks, declaratory relief, in the form of a declaration by
10 this Court, that Defendant violated KONYEN'S rights by engaging in unlawful retaliation, as alleged
11 herein.

12 88. As a result of such intentional, unlawful, and retaliatory conduct against KONYEN by
13 Defendant LOWES, including through its employees and agents, based on and because of KONYEN'S
14 Protected Activity, KONYEN is entitled to, and seeks, injunctive relief, in the form of an injunction
15 issued by this Court, that compels Defendant LOWES to give effect to the rights of KONYEN, and to
16 take other appropriate action, including: the removal of all adverse information from her employee file,
17 relevant to the claims of this case, and, if appropriate and feasible, the reinstatement of KONYEN to
18 her prior employment position or another vacant position with LOWES, for which she qualifies, with
19 full pay and benefits, as if never terminated.

20 **STATE CLAIMS**

21 **VII.**

22 **THIRD CLAIM FOR RELIEF**

23 **UNLAWFUL DISCRIMINATION BASED ON DISABILITY:**

24 **Failure to Engage in the Interactive Process in Good Faith, Failure to Accommodate Disabilities,**
25 **Disparate Treatment, and Termination of Employment Because of Disabilities**

26 **(Nevada Disability Discrimination Statute NRS 613.330)**

27 89. KONYEN incorporates by reference all prior allegations of this *Complaint*, as though
28 fully set forth herein.

1 90. Defendant LOWES violated NRS 613.330 and is liable for its culpable conduct and the
2 conduct of its employees and agents, including its HR Personnel, for the reasons set forth in this claim
3 for relief.

4 91. At all times relevant herein, KONYEN's Disabilities, described herein, were Physical
5 Impairments, as described herein, which Disabilities are covered by, and within the meaning of, NRS
6 613.330, in that these Physical Impairments substantially limited one or more of KONYEN'S major life
7 activities, including those described in ¶ 12, hereinabove.

8 92. At all times relevant herein, Defendant LOWES, including through its agents and
9 employees:

10 (A) were aware of KONYEN's Disabilities;

11 (B) were aware that KONYEN had a record of such Disabilities; and

12 (C) regarded KONYEN as having Physical Impairments, including her Disabilities,
13 (which have continued for than six months) that substantially limited one or more of her major life
14 activities, as described herein, including when receiving medical records, requests for accommodation,
15 and information from, or on behalf of, KONYEN.

16 93. Notwithstanding KONYEN's Disabilities, at all relevant times herein, KONYEN could
17 perform the essential functions of her job, with a reasonable accommodation of her Disabilities,
18 including those accommodations described in ¶ 17 hereinabove—whether such accommodations were
19 historically provided by LOWES or not, and whether such accommodations were actually considered
20 by Defendant LOWES or not.

21 94. At all relevant times herein, Defendant LOWES was required to engage in the
22 “interactive process” mandated by NRS 613.330, to identify and implement appropriate reasonable
23 accommodations to KONYEN for her Disabilities, including to explore and identify the precise
24 limitations resulting from KONYEN'S Disabilities and the potential reasonable accommodations that
25 could overcome those limitations.

26 95. At all relevant times herein, Defendant LOWES, including through its employees and
27 agents, refused to, and intentionally failed to, engage or *continue* to engage, in the mandatory NRS
28 613.330-interactive-process in good faith with KONYEN regarding her requests for accommodation of

1 her Disabilities and the continued provision of accommodations historically provided to KONYEN, as
2 described herein.

3 96. If Defendant LOWES had properly engaged or continued to engage in the Interactive
4 Process with KONYEN, as described herein, then Defendant LOWES and KONYEN could have
5 identified reasonable accommodations for KONYEN'S Disabilities, which would have allowed her to
6 remain employed with Defendant LOWES, as envisioned by NRS 613.330, including the
7 accommodations historically provided to KONYEN and also those described in ¶ 17 hereinabove.

8 97. At all relevant times herein, Defendant LOWES, including through its employees and
9 agents, intentionally engaged in its Adverse Employer Actions taken against KONYEN, described
10 herein, because of her Disabilities.

11 98. At all relevant times herein, Defendant LOWES, including through its employees and
12 agents, intentionally engaged in disparate treatment of KONYEN, as compared to other similarly
13 situated employees, and such differences in treatment were based on KONYEN'S protected
14 characteristic of her Disabilities, as described herein, including when taking the Adverse Employer
15 Actions against KONYEN, described herein.

16 99. As a result of such intentional, unlawful, and discriminatory conduct against KONYEN
17 by Defendant LOWES, including through its employees and agents, based on and because of
18 KONYEN'S Disabilities, KONYEN has suffered, and continues to suffer, economic losses, including
19 lost wages and benefits, back pay, front pay, physical and emotional harm, including mental anguish,
20 inconvenience, and the loss of enjoyment of life, for which she is entitled to compensatory and
21 equitable damages, in an amount to be proven at trial.

22 100. The Adverse Employer Actions, disparate treatment, and unlawful discrimination by
23 Defendant LOWES, including its employees and agents, was intentional, willful, malicious, and/or
24 engaged in with a reckless indifference to the health, safety, wellbeing, federally-protected and state-
25 law-protected rights of KONYEN, including when Defendant took its Adverse Employer Actions
26 against KONYEN—all while Defendant LOWES, its management, and its HR personnel made legally -
27 binding promises to KONYEN when asking her to forego her worker's compensation claim in
28 exchange for perpetually accommodating her Disabilities, above and beyond the ordinary requirements

1 imposed by law on LOWES (as described in ¶ 10 hereinabove)—and Defendant LOWES, its
 2 management, and its HR Personnel were well aware of KONYEN’S rights under the ADA, NRS
 3 613.330, and NRS 613.340, and all while they were well aware of Defendant LOWES’ legal
 4 obligations under the ADA, NRS 613.330, and NRS 613.340—warranting an award of punitive
 5 damages, to punish Defendant LOWES, in an amount determined by a jury at trial, according to law.

6 101. As a result of such intentional, unlawful, and discriminatory conduct against KONYEN
 7 by Defendant LOWES, including through its employees and agents, based on and because of
 8 KONYEN’S Disabilities, KONYEN has had to retain the services of attorneys in this matter, and she,
 9 therefore, is entitled to, and seeks reimbursement for, her attorneys’ fees and costs, her expert-witness
 10 fees, and her court costs, in an amount to be proven at trial.

11 102. As a result of such intentional, unlawful, and discriminatory conduct against KONYEN
 12 by Defendant LOWES, including through its employees and agents, based on and because of
 13 KONYEN’S Disabilities, KONYEN is entitled to, and seeks, declaratory relief, in the form of a
 14 declaration by this Court, that Defendant violated KONYEN’S rights by engaging in unlawful
 15 discrimination, as alleged herein.

16 103. As a result of such intentional, unlawful, and discriminatory conduct against KONYEN
 17 by Defendant LOWES, including through its employees and agents, based on and because of
 18 KONYEN’S Disabilities, KONYEN is entitled to, and seeks, injunctive relief, in the form of an
 19 injunction issued by this Court, that compels Defendant LOWES to give effect to the rights of
 20 KONYEN, and to take other appropriate action, including: the removal of all adverse information from
 21 her employee file, relevant to the claims of this case, and, if appropriate and feasible, the reinstatement
 22 of KONYEN to her prior employment position or another vacant position with Defendant LOWES, for
 23 which she qualifies, with full pay and benefits, as if never terminated.

24 VIII.

25 FOURTH CLAIM FOR RELIEF

26 UNLAWFUL RETALIATION BASED ON DISABILITY:

27 (Anti-Retaliation Provisions of Nevada’s Disability Discrimination Statute NRS 613.340)

28 104. KONYEN incorporates by reference all prior allegations of this *Complaint*, as though

1 fully set forth herein.

2 105. Defendant LOWES violated NRS 613.340's anti-retaliation provision and is liable for
3 unlawful retaliation under NRS 613.340 for its culpable conduct and the conduct of its employees and
4 agents, for the reasons set forth in this claim for relief.

5 106. At all times relevant herein, KONYEN engaged in the Protected Activities described
6 herein, including in ¶¶ 35-36 and 48-51, above, which were protected under the anti-retaliation
7 provisions of the ADA.

8 107. At all times relevant herein, Defendant LOWES, including through its employees and
9 agents, subjected KONYEN to the Adverse Employer Actions described herein, including as described
10 in ¶¶ 28-30, 32-34, 36, 48-54 hereinabove, in response to, retaliation for, and because of, her having
11 engaged in the Protected Activities, described herein.

12 108. At all times relevant herein, such Adverse Employer Actions taken against KONYEN by
13 Defendant LOWES, including through its employees and agents, as described herein, would be
14 materially adverse to a reasonable employee, reasonably likely to deter charging parties or others from
15 engaging in protected activity, and such Adverse Employer Actions materially affected the
16 compensation, terms, conditions, or privileges of KONYEN'S employment and other rights secured to
17 KONYEN, including LOWES' promise to "take care of" KONYEN, in exchange for her forbearing in
18 filing a worker's compensation claim, which included accommodating her Disabilities, above and
19 beyond the requirements of the NRS 613.330.

20 109. There was a causal link between KONYEN'S Protected Activities and these Adverse
21 Employer Actions that KONYEN suffered, including that causation shown by direct or circumstantial
22 evidence, including temporal proximity, and this included LOWES directly attributing its Adverse
23 Employer Actions against KONYEN to her Disabilities, which also related fundamentally to
24 KONYEN's Protected Activities.

25 110. Defendant LOWES, including through its employees and agents, subjected KONYEN to
26 these Adverse Employer Actions, in retaliation for, and because of, her Protected Activities.

27 111. Defendant LOWES, including through its employees and agents, unlawfully
28 discriminated against KONYEN by retaliation, described herein, and violated the anti-retaliation

1 provisions of NRS 613.340.

2 112. As a result of such intentional, unlawful, retaliatory conduct against KONYEN by
3 Defendant LOWES, including through its employees and agents, based on and because of KONYEN'S
4 Protected Activities, KONYEN has suffered, and continues to suffer, economic losses, including lost
5 wages and benefits, back pay, front pay, physical and emotional harm, including mental anguish,
6 inconvenience, and the loss of enjoyment of life, for which she is entitled to compensatory and
7 equitable damages, in an amount to be proven at trial.

8 113. The deliberate, unlawful, retaliatory conduct against KONYEN by Defendant LOWES,
9 including through its employees and agents, based on and because of KONYEN'S Protected Activities,
10 was intentional, willful, malicious, and/or engaged in with a reckless indifference to the health, safety,
11 wellbeing, federally-protected rights, and state-law-protected rights of KONYEN—including as shown
12 by the fact that Defendant LOWES' management and HR personnel were trained on their legal
13 obligations under anti-employment-discrimination laws and of the corresponding rights of their
14 employees, including KONYEN, and they were well aware of KONYEN'S rights under the ADA, NRS
15 613.330, and NRS 613.340—as well as the promise LOWES made to KONYEN to “take care of her,”
16 *i.e.*, to accommodate her Disabilities to a degree above and beyond that required by the ADA and NRS
17 613.330, in exchange for her not filing a worker's compensation claim—warranting an award of
18 punitive damages, to punish Defendant LOWES, in an amount determined by a jury at trial, according
19 to law.

20 114. As a result of such intentional, unlawful, and retaliatory conduct against KONYEN by
21 Defendant LOWES, including through its employees and agents, based on and because of KONYEN'S
22 Protected Activity, KONYEN has had to retain the services of attorneys in this matter, and she,
23 therefore, is entitled to, and seeks reimbursement for, her attorneys' fees and costs, her expert-witness
24 fees, and her court costs, in an amount to be proven at trial.

25 115. As a result of such intentional, unlawful, and retaliatory conduct against KONYEN by
26 Defendant LOWES, including through its employees and agents, based on and because of KONYEN'S
27 Protected Activity, KONYEN is entitled to, and seeks, declaratory relief, in the form of a declaration by
28 this Court, that Defendant violated KONYEN'S rights by engaging in unlawful retaliation, as alleged

1 herein.

2 116. As a result of such intentional, unlawful, and retaliatory conduct against KONYEN by
3 Defendant LOWES, including through its employees and agents, based on and because of KONYEN's
4 Protected Activity, KONYEN is entitled to, and seeks, injunctive relief, in the form of an injunction
5 issued by this Court, that compels Defendant LOWES to give effect to the rights of KONYEN, and to
6 take other appropriate action, including: the removal of all adverse information from her employee file,
7 relevant to the claims of this case, and, if appropriate and feasible, the reinstatement of KONYEN to
8 her prior employment position or another vacant position with LOWES, for which she qualifies, with
9 full pay and benefits, as if never terminated.

10 **IX.**

11 **FIFTH CLAIM FOR RELIEF**

12 **BREACH OF LEGALLY ENFORCEABLE PROMISE**

13 **OR, IN THE ALTERNATIVE,**

14 **BREACH OF EQUITABLY ENFORCEABLE PROMISE**

15 **(to "Take Care of" KONYEN by Accommodating Her Disabilities Beyond the Requirements of**
16 **Federal and State Law)**

17 **—Asserted as a Breach of Contract Claim, or, in the Alternative**

18 **Asserted as an Unjust Enrichment Claim for Recovery in Quasi Contract—**

19 117. KONYEN incorporates by reference all prior allegations of this *Complaint*, as though
20 fully set forth herein.

21 118. During KONYEN's first tenure at the LOWES Reno, NV Store, LOWES offered to
22 "take care of" KONYEN's occupational disease, *i.e.*, to accommodate her occupational
23 disease/Disabilities in the absence of the protection of the law, to a degree and extent not protected by
24 the law, and to a degree and extent exceeding the requirements of the law (which would include the
25 ADA and NRS 613.330), in exchange for KONYEN forbearing in her legal right to file a worker's
26 compensation claim against LOWES for her occupational disease to her lower back, which arose from
27 the cumulative effects of her repeated lifting of flooring materials at LOWES, as described in ¶¶ 8-15,
28 hereinabove.

1 119. KONYEN accepted LOWES' offer, detrimentally relied on it, and performed her
2 obligations under this agreement, including by forbearing in bringing her legally cognizable, valid
3 worker's compensation claim against LOWES for her occupational disease as described herein.

4 120. KONYEN's forbearance in bringing her legally cognizable, valid worker's
5 compensation claim against LOWES constituted valuable consideration and detrimental reliance for the
6 agreement by and between LOWES and KONYEN.

7 121. Accordingly, LOWES and KONYEN attempted to form, and did form, a contract,
8 whether oral, written, or implied in fact, to give effect to the parties' intents and offers stated in ¶¶ 118-
9 120, hereinabove.

10 122. LOWES and KONYEN's exchange of promises, and the consideration supplied by
11 KONYEN and benefit accruing to LOWES, in its avoidance of KONYEN's worker's compensation
12 claim, consummated a legally-enforceable promise, as a contract or employment contract, by which
13 LOWES was obligated to accommodate KONYEN's Disabilities even where not required to do so by
14 law and to a degree and extent exceeding that statutorily required by law (*e.g.*, the ADA and NRS
15 613.330), including by accommodating her Disabilities even where such accommodations would
16 otherwise amount to an "undue hardship," within the meaning of the ADA or NRS 613.330.

17 123. In the alternative, if the Court or the fact finder determines that LOWES and
18 KONYEN's exchange of promises, and the consideration supplied by KONYEN and benefit accruing
19 to LOWES, in its avoidance of KONYEN's worker's compensation claim, did not create an express
20 contract or a legally enforceable contract, then the same created an enforceable promise in equity under
21 the doctrine of unjust enrichment or recovery in quasi contract, inasmuch as:

22 (A) LOWES and KONYEN had a direct relationship and course of dealings, as
23 employer and employee;

24 (B) KONYEN conferred a benefit on LOWES, in causing LOWES to avoid
25 KONYEN's worker's compensation claim;

26 (C) LOWES appreciated this benefit by KONYEN, which it recognized, including
27 by encouraging KONYEN to forebear in bringing her workers' compensation claim, in exchange for
28 LOWES' promise to "take care of KONYEN," in the absence of filing such a claim; and

1 (D) LOWES accepted and retained such a benefit provided by KONYEN under
2 circumstances such that it would be inequitable for LOWES to retain the benefit without performance
3 of its promise and/or the payment of the value thereof.

4 124. KONYEN performed her obligations under the contract, by not bringing a worker's
5 compensation claim against LOWES.

6 125. For many years, up to about May 19, 2019, LOWES "took care of" KONYEN's
7 Disabilities, by accommodating them, as described herein.

8 126. However, on or about May 19, 2019, LOWES breached its contract or enforceable
9 promise/quasi-contract to "take care of" Konyen's Disabilities, when it refused to accommodate her
10 Disabilities any longer and took the Adverse Employer Actions described herein—whether such
11 accommodations were required by the law or not, *e.g.*, the ADA or NRS 613.330.

12 127. KONYEN has already asserted that LOWES' failure to accommodate her Disabilities
13 violated the ADA and NRS 613.330 in prior causes of action of this pleading. However, to the degree
14 that the Court or the fact finder determines that LOWES did not violate the ADA or NRS 613.330,
15 KONYEN herein asserts that LOWES' failure to accommodate her Disabilities breached its contractual
16 obligations or legally/equitably enforceable promise to "take care of" Konyen's Disabilities, which
17 required that it accommodate her Disabilities in the absence of the protection of the law, without regard
18 to any requirement of the ADA or NRS 613.330, and, in excess of the requirements of the ADA or
19 NRS 613.330.

20 128. As a result of this breach of contract or legally/equitably enforceable promise by
21 Defendant LOWES, including through its employees and agents, KONYEN has suffered, and continues
22 to suffer, economic losses, including lost wages and benefits, back pay, front pay, consequential and
23 incidental losses, for which she is entitled to compensatory and equitable damages, in an amount to be
24 proven at trial.

25 129. As a result of this breach of contract or legally/equitably enforceable promise by
26 Defendant LOWES, including through its employees and agents, KONYEN has had to retain the
27 services of attorneys in this matter, and she, therefore, is entitled to, and seeks reimbursement for, her
28 attorneys' fees and costs, her expert-witness fees, and her court costs, in an amount to be proven at trial.

130. As a result of this breach of contract or legally/equitably enforceable promise by Defendant LOWES, including through its employees and agents, KONYEN is entitled to, and seeks, declaratory relief, in the form of a declaration by this Court, that Defendant violated KONYEN'S rights by engaging in unlawful retaliation, as alleged herein.

131. As a result of this breach of contract or legally/equitably enforceable promise by Defendant LOWES, including through its employees and agents, KONYEN is entitled to, and seeks, injunctive relief, in the form of an injunction issued by this Court, that compels Defendant LOWES to give effect to the rights of KONYEN, and to take other appropriate action, including: the removal of all adverse information from her employee file, relevant to the claims of this case, and, if appropriate and feasible, the reinstatement of KONYEN to her prior employment position or another vacant position with LOWES, with accommodation of her Disabilities, with full pay and benefits, as if never terminated.

X.

PRAYER FOR RELIEF

WHEREFORE, KONYEN prays for judgment against Defendant LOWES, as follows:

1. For equitable relief, including back pay and front pay, to the fullest recoverable extent, under the ADA, NRS 613.330, and NRS 613.340, separately, in an amount to be proven at trial;
2. For general, compensatory damages on all claims, to the fullest recoverable extent, under the ADA, NRS 613.330, and NRS 613.340, including for non-pecuniary, compensatory damages for emotional pain, suffering, inconvenience, mental anguish, anger, loss of enjoyment of life, and other nonpecuniary losses, separately, in an amount to be proven at trial;
3. For special, compensatory damages on all claims, for pecuniary losses and damages to the fullest recoverable extent, under the ADA, NRS 613.330, and NRS 613.340, separately, in an amount to be proven at trial;
4. For legal and equitable relief on her Fifth Claim for Relief, including compensatory damages and equitable relief for breach of contract, or, in the alternative, unjust

1 enrichment and recovery in quasi contract;

- 2 5. For past and future compensatory damages, including incidental and consequential
3 losses, incurred by reason of Defendant's acts, omissions, carelessness, negligence,
4 deliberate indifference, and other culpable conduct described herein, in an amount to be
5 proven at trial, to the fullest recoverable extent, under the ADA, NRS 613.330, and NRS
6 613.340, separately, in an amount to be proven at trial;
- 7 6. For exemplary and punitive damages, as allowed by law;
- 8 7. For costs of the suit incurred herein, as allowed by law;
- 9 8. For attorneys' fees, costs, and prejudgment interest, as allowed by law;
- 10 9. For experts' fees, costs as allowed by law, in an amount in an amount to be determined
11 at trial or a hearing on the same;
- 12 10. For Declaratory relief, equitably determined by the Court at trial. Pursuant to 28 U.S.C.
13 § 2201, Federal Rule of Civil Procedure 57, 42 U.S.C. §§ 2000e-5, NRS 30.070, NRS
14 30.100, NRS 613.330, and NRS 613,340, and the Court's inherent equitable powers,
15 KONYEN seeks, and is entitled to have, declaratory relief awarded in her favor, to
16 declare her rights and the obligations of Defendant LOWES, which matters are now in
17 controversy or dispute, where such declaratory relief is necessary and proper to the
18 termination of the disputes raised herein, including as specifically prayed for below,
19 including declaratory relief whereby the Court issues a declaration that Defendant
20 LOWES unlawfully discriminated against KONYEN in violation of the ADA, NRS
21 613.330, and NRS 613.340, and otherwise violated KONYEN'S rights under federal law
22 and state law, as alleged herein, and regarding the rights and obligations of the parties,
23 relating to KONYEN'S employment and re-employment;
- 24 11. Based on the foregoing, KONYEN has suffered an irreparable injury, and the remedies
25 available at law, such as monetary damages, are inadequate to compensate for that
26 injury. This inadequacy is, in part, based on the facts that KONYEN is not currently
27 employed by Defendant LOWES and should be reinstated, if feasible, including to
28 another vacant position at Defendant LOWES, for which she is qualified, and the

1 inadequacies of remedies available at law, such as monetary damages, are further based
2 on the fact that Defendant LOWES is currently maintaining false and disparaging
3 information about KONYEN'S work performance and tenure at LOWES, which will be
4 discovered by third parties, including prospective employers of KONYEN, which will
5 interfere with her ability to obtain employment, including re-employment at LOWES.
6 As such KONYEN is entitled to injunctive relief, including an injunction compelling
7 Defendant:

8 (A) To remove false, adverse information contained in her personnel files relating to
9 the claims of this case;

10 (B) To provide only a "neutral" job reference concerning KONYEN'S tenure at
11 LOWES, to all inquiring prospective employers; and

12 (C) To reinstate KONYEN'S employment at LOWES or to another available
13 position for which she qualifies at LOWES, if feasible and appropriate, with full pay and benefits, as if
14 never terminated.

15 Considering the balance of hardships between Plaintiff and Defendant, a remedy in equity is
16 warranted, and the public interest would not be disserved by issuance of such injunctive relief.
17 KONYEN herein seeks Injunctive relief, equitably determined by the Court at trial;

18 12. For such other relief as the Court may deem just and proper; and

19 13. Pursuant to the *Federal Rules of Civil Procedure*, Rule 38, Plaintiff demands a trial by
20 jury on all issues triable by right of a jury.

21
22 Dated this 6th day of December 2022.

THE GEDDES LAW FIRM, P.C.

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